

SERVED: April 9, 1993

NTSB Order No. EA-3851

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 6th day of April, 1993

JOSEPH M. DEL BALZO,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-12918
v.)	
)	
DAVID CORREA,)	
)	
Respondent.)	
)	

ORDER DENYING STAY

Respondent, pro se, has requested a stay of NTSB Order EA-3815 (served March 4, 1993) pending disposition of a petition for review of that order to be filed in the U.S. Court of Appeals.¹ For the reasons discussed below, the request, opposed by the Administrator, will be denied.

Although the Administrator correctly notes, citing, among other cases, Administrator v. Green, NTSB Order No. EA-3375 (1991), that Board policy is not to grant stays of its orders pending judicial review in revocation cases,² the policy espoused

¹The Board in Order EA-3815 denied an appeal from an order of the law judge affirming the Administrator's emergency revocation of respondent's airman certificates pursuant to section 61.15(a) of the Federal Aviation Regulations.

²But see, Administrator v. Coombs, NTSB Order EA-3750

in those cases is of no precedential value here, for it reflects the belief that where the Board has upheld a determination by the Administrator that a certificate holder lacks qualification, the stay of sanction effected by an appeal to the Board³ should not be continued any further, given the serious threat to air safety that unqualified certificate holders pose. That rationale is inapplicable to this case, however, because this is an emergency proceeding and, consequently, the appeal to the Board did not stay the Administrator's order.⁴ Thus, a stay of our decision would not operate to postpone the effectiveness of the revocation order, which remains in force by virtue of the Board's affirmance of it.

ACCORDINGLY, IT IS ORDERED THAT:

The respondent's request for a stay is denied.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above order.

(..continued)

(served December 3, 1992)(Stay of Board decision in revocation case granted where issue of respondent's qualification was not litigated before the Board because his appeal was dismissed on procedural ground). A motion by the Administrator that we reconsider or vacate the stay granted in Coombs was denied in Board Order EA-3792 (served February 2, 1993).

³Under Section 609(a) of the Federal Aviation Act of 1958, as amended, 49 USC § 1429(a), in non-emergency cases, "[t]he filing of an appeal with the Board shall stay the effectiveness of the Administrator's order...."

⁴We therefore express no view on whether the factors urged by respondent in support of the grant of a stay (including, among other things, the fact that he has been incarcerated since November 1989 and his belief that there is a strong possibility that his criminal drug conviction will be overturned in an already pending court appeal) would have been persuasive in the context of a non-emergency revocation proceeding.